

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.43 OF 2006**

Balu Namdeo Ubale & Ors.

...Appellants

Vs.

Yashwant Laxman Ubale & Ors.

...Respondents

Mr A.R. Baxi for the Appellants.

Mr N.V. Walawalkar for the Respondents.

**CORAM : A. S. OKA, J.
DATE : APRIL 25, 2006.**

P.C.:

1. The Second Appeal is by the original Plaintiffs. The suit is filed by the Appellants for declaration of their ownership in respect of the suit properties. The Trial Court dismissed the suit by holding that claim of ownership is not established and the finding of the Trial Court has been confirmed in Appeal. The claim of the Appellants is that they are the legal representatives of the deceased Naru Ubale.

2. The Appellants-Plaintiffs are the legal representatives of Namdeo Bhau Ubale. The submission of the learned Counsel appearing for the Appellants is that in the proceedings before the Revenue Authorities it has been held that the Appellants are the legal representatives of the deceased Naru Ubale. She submitted that the adjudication is made by the Revenue

Authorities on the basis of the decree passed in earlier suit filed by Namdeo and one Baijabai who was claiming to be the widow of deceased Naru. She therefore, submitted that in the light of the findings recorded by the Revenue Authorities the title was established by the Appellants.

3. I have considered the submissions. One Baijabai claiming to be widow of deceased Naru and the father of present Appellants Namdeo filed Regular Civil Suit No.242 of 1973 against the Respondent herein and others. It appears that in the said suit the said Plaintiffs claimed that by virtue of Will dated 29th November, 1961 allegedly executed by deceased Naru, they have become owners of the suit property. There was a cross suit filed by one Yeshwant Vithu Ubale who was a defendant in Regular Civil Suit No.242 of 1973 alongwith Yeshwant Laxman Ubale, the Respondent herein in which he claimed to be legal representative of deceased Naru. Suits were decided by common judgment dated 05th May, 1984. Both civil suits were dismissed. In paragraph No.20 of the Judgment, the Civil Court held that the Plaintiffs in both suit have miserably failed to establish their

pleas. The Trial Court held that the Respondent herein has no right to retain possession of the suit land as he failed to prove that he was the tenant of deceased Naru Ubale. The Trial Court observed that neither the Plaintiffs nor the Defendants in both the suits were in position to establish title to the properties held by the deceased Naru. Therefore, the Trial Court observed that provisions of section 29 of the Hindu Succession Act, 1956 will have to be invoked. The learned Trial Judge directed that a copy of the decree should be sent to the Collector, Sangli for taking necessary action under section 29 of the said Act of 1956.

4. An Appeal was preferred by Namdeo and Baijabai for challenging the judgment and decree of the Trial Court. The points for determination framed by the Appellate Court show that the Appellants therein in the alternative contended that they were the legal heirs of deceased Naru and were entitled to inherit the suit lands. The Appeal was dismissed. The Appellate Court held that Baijabai and Namdeo had failed to prove execution of Will by deceased Naru in their favour. While dealing with the contention

raised in the alternative, in paragraph No.22 the

Appellate Court observed thus:

"22. So far as relation between deceased Naru and original plaintiff No.2-Namdev Bhau Ubale is concerned, there is hardly any evidence to hold that he is successor of the properties left by deceased Naru. The evidence of Bajjabi purports to show that the original plaintiff No.2-Namdev is nephew of deceased Naru. There is no cogent evidence about the relations between deceased Naru and father of plaintiff No.2-Namdev. The plaintiffs could not show pedigree table and, therefore, it is difficult to hold that plaintiff No.2-Namdev is entitled to inherit properties of deceased Naru as a surviving male heir. Here, it is pertinent to note that he has not examined herself before the trial court. There is no iota of evidence in order to show that he is agnet or cognet left by deceased Naru. Needless to say, therefore, the plaintiffs have miserably failed to prove their case on either count." (Emphasis supplied)

It is not in dispute that judgment of Appellate Court has attained finality as the Second Appeal preferred for challenging the said decision has been dismissed. In view of this position, now the Appellants who are claiming through deceased Namdeo cannot claim to be legal heirs of deceased Naru after there is an adjudication by the Civil Court which has attained finality. The Appellants cannot rely upon findings recorded by Revenue Authorities regarding their rights to the suit property. As directed by the Civil Court in earlier suit, the Revenue Authorities were required to take action under section 29 of the said Act of 1956 as it was held that the property shall devolve on the Government.

5. Hence, the Appellants have no right, title or interests in respect of the suit property and the courts below were right in dismissing the suit filed by the Appellants. No substantial question of law arises. Second Appeal is dismissed. No orders as to costs.

6. At this stage, the learned Counsel appearing

for the Appellants prays that order of status-quo passed by this court may be continued for a reasonable time. Shri Walawalkar, learned Senior Counsel appearing for the Respondent opposes the prayer by pointing out that the father of the Appellants has admitted that he was not in possession and the Respondent was in possession. Considering the facts and circumstances of the case, ad-interim order passed by this court will continue to operate for a period of four weeks from today.

JUDGE